

USPTO Customer No. 25280

Case # 5308

REMARKS

Claims 1-14 are pending in this Application. Claim 14 has been amended. Claims 15-19 have been added. Thus, Claims 1-19 are subject to continued examination.

Double Patenting

Claims 1-14 each stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims in copending application 10/207519 in view of various secondary art. In view of the provisional status of the rejection, it is submitted that a terminal disclaimer may be premature at this time. However, upon resolution of all other matters, Applicants will submit a terminal disclaimer, if required.

Obviousness Rejection

Claims 1-10, 11 and 14 each stand rejected under 35 U.S.C. 103(a) as being obvious over US 2002/0108578 to Kostial in view of U.S. patent 3,783,085 to Pearson. Claims 12 and 13 stand rejected under 35 U.S.C. 103(a) as being obvious over US 2002/0108578 to Kostial in view of U.S. patent 3,783,085 to Pearson and further in view of U.S. patent 6,196,156 to Denesuk et al. Continued rejection on these grounds is respectfully traversed and reconsideration is requested at this time.

With respect to claims 1-10, 11 and 14, the Office Action takes the position that Kostial teaches the claimed animal bed except for the claimed odor receiving layer. In order to address the deficiency in Kostial the Office Action relies on Pearson. The Office Action takes the position that Pearson teaches an odor receiving layer and concludes that it would have been

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obvious to have modified Kostial to include an odor receiving layer permanently disposed on the interior surface of the face textile based on the teachings of Pearson so as to provide a device with an improved odor reducing feature. Continued rejection on this basis is respectfully traversed.

As an initial point Applicants respectfully note that, as best understood, Pearson makes no mention of odor containment properties. Pearson appears to be directed to a protective garment material for use in protecting a wearer against toxic chemicals. These materials are designed not to be permeable to harmful vapors but must be permeable to air. See, Col. 1, lines 30-50. The reference appears to provide no teaching that odor control is provided. Nor is it apparent from the teachings of the reference that odor control is even a desirable property. In the absence of any teaching of odor control, it is respectfully submitted that the required basis for making the proposed modification is lacking. That is, it is respectfully submitted that there would be no reasonable basis for incorporating the toxic chemical barrier from Pearson into a pet bed absent the impermissible reference to the current application as a guide.

Aside from the lack of any teaching in Pearson regarding odor control, Applicants also respectfully submit that the teachings which are present in Pearson would actually tend to lead away from incorporating the material of Pearson into a pet bed as claimed. In this regard, Applicants note that Pearson clearly teaches that the powdered charcoal layer is intended to be highly absorbent. Such characteristics are desirable in the protective barrier material of Pearson to absorb and hold chemical agents away from a user. However, in a pet bed the source of the potentially dangerous agents (urine, fecal matter etc.) is the pet itself. Thus, placing the material of Pearson immediately adjacent the surface being used by the animal would appear to be counter-intuitive, since such a layer would be expected to absorb and vigorously retain hazardous substances near the user rather than permitting wicking into a

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replaceable foam or cedar. Moreover, Pearson appears to be directed to protection against chemical agents such as pesticides rather than microbe containing biological agents. In a pet bed environment, it is such microbe-containing biological agents that are of primary concern. A high surface area, highly absorbent charcoal environment as taught by Pearson et al. would be expected to create exactly the type of environment that the reference to Denesuk et al. indicates as encouraging microbe proliferation and retention. Thus, it is respectfully submitted that the placement of such a layer in adjacent relation to the face textile in a pet bed is actually counter-intuitive, since a microbe-favorable environment would be created in close proximity to the animal. Accordingly reconsideration and withdrawal of the rejection is requested.

As regards claims 12 and 13, as best understood, the Office Action takes the position that it would be obvious to modify the pet bed of Kostial to incorporate the protective material of Pearson et al. and to further use a plastic backing material as taught by U.S. Patent No. 6,196,156 to Denesuk et al. to provide better protection for the cushion. In this regard, Applicants respectfully note that the secondary reference to Pearson et al., which teaches the use of activated charcoal, also specifically teaches the need to retain permeability. Applicants respectfully submit that the proposed modification is in direct opposition to this advocated retention of permeability.

Finally, as regards claims 14-19, Applicants note that the claims now recite that the adhesive extends in covering bonding relation between backing and the activated charcoal. Such an arrangement is illustrated in FIG. 4 of the specification. As best understood, such a covering relation is directly contrary to the teachings in Pearson et al. In particular, Pearson et al. takes great pains to avoid encapsulating the charcoal. See, Col. 3, lines 21-37. Thus, the present invention as recited at claims 14-19 appears to proceed contrary to the teachings of the cited references. This is especially true with regard to those claims calling for a film backing

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since the advocated retained air permeability is forfeited by use of a film. Accordingly, it is respectfully submitted that these claims are even further removed from any appropriate conclusion of obviousness.

Conclusion:

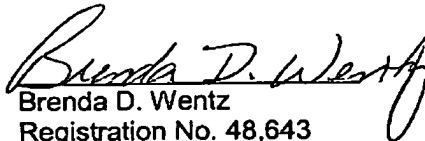
For the reasons set forth above, it is respectfully submitted that all claims now stand in condition for allowance.

Should any issues remain after consideration of this Amendment and accompanying Remarks, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

To any extent required for acceptance of this paper, an extension of time is hereby requested. In the event that there are additional fees associated with the submission of these papers (including extension of time fees), authorization is hereby provided to withdraw such fees from Deposit Account No. 04-0500.

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Respectfully submitted,


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